

Regulations on Access and Property Rights to Natural Resources in Nicaragua and Honduras:

Literature review for institutional mapping
of the Nicaragua-Honduras Sentinel Landscape

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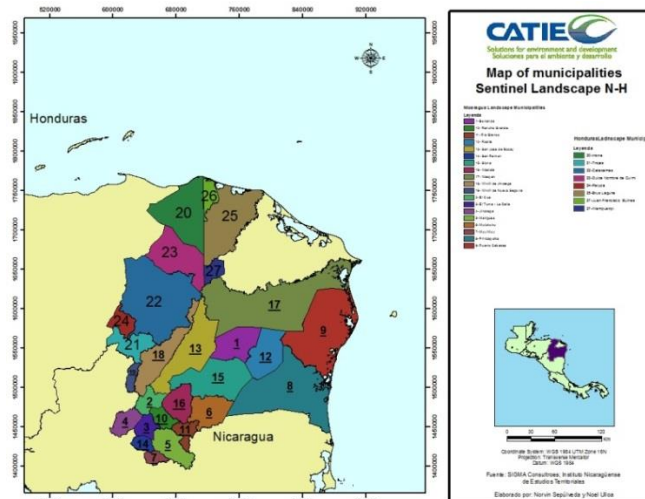
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1. Introduction

The Nicaragua-Honduras Sentinel Landscape (N-H Sentinel Landscape) is a large, rural, diverse territory. The spatial extension of the SL was defined on the basis of the following characteristics: (1) the presence of two Biosphere Reserves (Bosawás⁶ in Nicaragua and Rio Plátano in Honduras, including their nucleus and buffer zones that play a major role in the Mesoamerican Biological Corridor⁷ (this criteria refers to two main criteria for selecting a Sentinel Landscape, namely the variation along the forest transition curve and the variation in levels and types of functional diversity for the provision of ecosystem goods and services); (2) the presence of surrounding agricultural zones of interest, in particular because some of the SL partners have on-going research and development activities in these areas (for instance, the Mesoamerican Agro-environmental Program of CATIE); (3) the existence of interesting community forest management experiences (URACCAN suggested the inclusion of the Municipalities of Prinzapolka and Puerto Cabezas in Nicaragua, where interesting experiences of indigenous community forestry management are observed). In addition of these two major criteria, the full politico-administrative territories of relevant zones were included to have some data that are only available at that level such as a census for instance; some municipalities were excluded because of insecurity issues (in particular the Municipalities in the East of Honduras).

Figure 1: spatial extension of the N-H Sentinel Landscape



⁶ The name of Bosawás refers to Río "BOcay", Cerro "SAslaya", and Río "WASpuk".

⁷ The Mesoamerican Biological Corridor (English acronym MBC; Spanish: Corredor Biológico Mesoamericano, CBM) is a large habitat corridor in Mesoamerica, stretching from Mexico southeastward through most of Central America, connecting several national parks, national and private nature refuges and private wild lands. It was started in 1998 to keep 106 critically endangered species from going extinct. This came from an earlier plan called Paseo Pantera, originally proposed in the early 1990s. It was established to protect Central America's immense biodiversity. In 1997 the plan was initiated, establishing links between protected areas in four distinctions: the core area to exclusively conserve eco-systems and species and in where human activities are prohibited; buffer zones, restricted use by themselves; corridors, which are areas that facilitate movement, dispersal and migration of species, and in where human activities are of low impact; and, multiple use areas which may include areas devoted to agriculture, livestock, fisheries, forest management, and more (extract from the Wikipedia website).

The N-H Sentinel Landscape presents a very specific institutional context, which will consequently be elaborated for the Nicaraguan and Honduran side. Nicaragua is divided for politico-administrative purposes into fifteen (15) departments (in Spanish *Departamentos*), and two autonomous regions (the North and South Autonomous Atlantic Regions, respectively RAAN y RAAS). The departments and the Autonomous Regions are in turn divided into 153 Municipalities (in Spanish *Municipios - Alcaldías*)⁸. The Constitution of Nicaragua established the Charter of Autonomy for the two Autonomous Atlantic Regions, thereby setting stage for limited self-government of about half the country area. Autonomy Law in turn recognizes the rights of Indigenous people and Afro-descendants⁹ to use, administer and manage their homelands and resources as communal property (seven indigenous territories have obtained titles so far and are represented by a local territorial government – *Gobierno Territorial*)¹⁰. In addition, the Nicaraguan part of the N-H SL comprises the entire Bosawás Biosphere Reserve¹¹ (hereafter Bosawás), including a predominantly indigenous (Miskitu and Mayangna) nucleus zone and a predominantly non-indigenous buffer zone that falls under the double administration of the central government and of the territorial indigenous authorities (partly decentralized). It also includes some (predominantly non indigenous)municipalities which are near the Bosawás biosphere reserve (and which were considered relevant as connecting areas for the Mesoamerican Biological Corridor, that only fall under central administration. Consequently, another layer of legal frameworks corresponding to the presence of the Biosphere Reserve complicates the local administration of natural resources in the N-H SL.

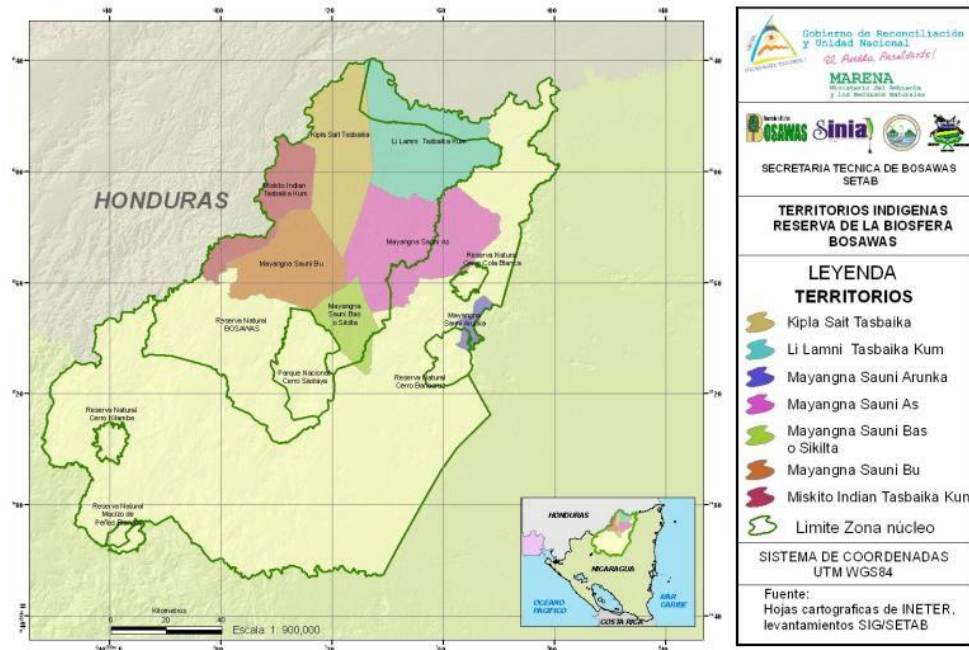
⁸ The Nicaraguan part of the Landscape would consist of the following 18 Municipalities, located in three Departments and one Autonomous Region: Jinotega, El Cuá, Wiwilí, San José de Bocay (Department of Jinotega); El Tuma-La Dalia, Rancho Grande, San Ramon, Muy Muy and Matiguás (Department of Matagalpa); Wiwilí de Nueva Segovia (Department of Nueva Segovia); Prinzapolka; Rosita, Siuna, Mulukuku, Waslalá, Waspam, Puerto Cabezas, and Bonanza (RAAN). By extension, it also includes all the indigenous territories that are recognized in the RAAN. Consequently, the Nicaraguan part of the N-H SL does not fall under a single legal framework: one part (comprising the Municipalities located in the Departments of Jinotega, Nueva Segovia and Matagalpa) falls under the, partly decentralized, national administration. The other part (comprising the Municipalities and Indigenous Territories of the RAAN) relates to the decentralized semi-autonomous administration related to above-mentioned law.

⁹ The original population of the Autonomous Regions is constituted by indigenous peoples and ethnic communities with multilingual characteristics (Miskitus, Mayangnas, Creoles, Ramas, and Garifunas), located in territories with a strong sense of ownership of their communal lands on the coastal and forest areas, which are of high ecologic and environmental vulnerability.

¹⁰ Municipalities have elected mayors (in Spanish *Alcalde*) and municipal councils. Indigenous territories have local governments (in Spanish, *Gobiernos territoriales*) that represent and are elected by local indigenous communities' assemblies; territorial governments are the maximum executive instance in a territory and is the entity in charge of elaboration and coordination of the Autonomous Plan of Development and Administration (Plan Autónomo de Desarrollo y Administración -PADA) of each indigenous territory, according to the Autonomous Law.

¹¹ "Bosawás was created by Executive Decree 44-91 in 1991 by the President Violeta Chamorro. With minimal recognition of the indigenous peoples living in Bosawás, the Reserve was originally placed under the jurisdiction of the Institute for Natural Resources, now known as the Nicaraguan Ministry of the Environment and Natural Resources (MARENA), and zoned as a strict conservation area or "core zone". Management of Bosawás was restructured mid-1990 [in particular after Bosawás was declared Biosphere Reserve]. As part of the process, the conservation area of Bosawás was rezoned into six separate indigenous territories [the ones included in the study], and the indigenous residents in each territory established their territorial property rights and land management plans. By 1997, the indigenous residents had established *de facto* governing rights over their territories. [... and in 2003], the Nicaraguan government formally recognized their tenure rights by granting them territorial titles to their lands." (Hayes, 2007).

Figure 2: Indigenous territories and Bosawás in Nicaragua



Honduras' politico-administrative division consists of eighteen (18) departments (*Departamentos*) and 298 municipalities (*Municipios - Alcaldías*). It was decided that N-H SL would comprise 9 Municipalities located in 4 Departments in Honduras¹²: Catacamas, Dulce Nombre de Culmí, Patuca (Department of Olancho), Brus Laguna, Juan Francisco Bulnes, Wampusirpi (Department of Gracias a Dios), Trojes (Department of El Paraíso), and Iriona (Department of Colón). The area of the N-H SL in Honduras comprises the Río Plátano Biosphere Reserve (hereafter Río Plátano)¹³. Today, Río Plátano is divided into three management zones: a cultural zone for the indigenous residents, a buffer zone for the mestizo residents, and a core zone for strict preservation.

Because of its localization and extension, various characteristics and issues can be addressed in the large and diverse geographic territory of the N-H Sentinel Landscape; they will have consequences on the institutional mapping and analysis:

¹² Municipalities have elected mayors (Spanish *Alcalde*), as opposed to the appointed governors of Departments.

¹³ "Río Plátano was created in 1980 and declared a World Heritage Site in 1982. In 1991, law 74-91 transferred management of Río Plátano from the Honduran Natural Resource Management Institute (RENARE) to AFE-COHEFOR (Administración Forestal Del Estado, Corporación Hondureña de Desarrollo Forestal) [which was renamed in 2007 Instituto de Conservación y Desarrollo Forestal (ICF)]. Nonetheless, it was essentially a "paper park" until the mid-1990s. The reserve regulations were not publicized, monitored, or enforced, and few, if any, residents, in Río Plátano knew they were living in a reserve. In the mid-1990s, reserve policies were restructured in an attempt to gain greater awareness of, and compliance with, reserve regulations on the part of the residents [and after the Reserve being also declared as Biosphere Reserve by UNESCO]. The process rezoned the reserve and established a management plan." (Hayes, 2007).

- The geographic territory of the Landscape embraces two countries (Nicaragua and Honduras) that have different policy and legal frameworks in general, also the ones related to natural resources' access and use; rules and norms will consequently be different in the two countries;
- Part of the territory is under Biosphere Reserve statutes (Bosawás and Rio Plátano Biosphere Reserve); consequently, specific protected areas regulations (and related institutions) will apply in part of the territory of the SL;
- Part of the territory or the SL corresponds to customary territory of various indigenous groups (for instance in Nicaragua for Mayangna and Miskitu indigenous people that have specific rights over natural resources).

For these reasons, an analysis of the legal and institutional frameworks in Nicaragua and Honduras, and more specifically rights over and access to natural resources was the first step of the institutional mapping. The study of the legal and institutional frameworks related to natural resources was based on a review of related reports and documents, and an analysis of current legislation in both Nicaragua and Honduras. In particular, previous literature and analysis were particularly useful and used to draft this synthesis (Madrigal Cordero and Mauri Carabaguías 2004; Hayes 2007; Novo and Garrido 2010; Gómez, Munk Ravnborg et al. 2011; Larson and Lewis-Mendoza 2011; Sánchez Navas 2011; Larson and Soto 2012; UN-REDD Programme 2012; USAID 2013; USAID 2013). Due to the characteristics of the N-H Sentinel Landscape, we chose to focus our literature review on land, trees and forests, water and mineral –which are the major natural resources existing and used in the N-H Sentinel Landscape), analyzing in particular laws and regulations on access to land and rights to use the land; the forestry sector; water; and mineral extraction.

2. Legal and institutional frameworks for access to land and land use

A. Nicaragua

1. Legal framework

In Nicaragua, several core policy documents state legal rules regarding access to land:

- The **Political Constitution of Nicaragua** (1987) guarantees the right to private land ownership, in particular in Article 44 which states that all Nicaraguan people have the right to personal property to ensure necessary and essential goods for their development. Article 108 guarantees private land ownership to all owners who use their land productively and efficiently. Articles 89 recognizes that the indigenous and ethnic communities of the Atlantic Coast have the right to provide their own forms of social organization and to administer their local affairs in accordance with their traditions, guaranteeing collective land ownership to them.

- Nicaragua’s **Civil Code** (1904) governs real property in Nicaragua and provides the framework for the classification of land and land tenure types (see later)¹⁴.
- The **Statute of Autonomy of the Atlantic Coast** (Law No. 28) (1987) and the **Law of Communal Property Regime** (Law No. 445) (2003), in accordance with the Constitution, guarantees the indigenous peoples and ethnic communities of the Atlantic Coast of Nicaragua - Bocay, Coco, Indio and Maize Rivers - the effectiveness of their form of communal property (see later). Article 2 of Law No. 445 in particular guarantee these populations *“the full recognition of communal property ownerships rights, the use, administration and management of traditional lands and their natural resources, through the demarcation and titling of the same”*.
- Various laws aiming at implementing land reforms (mostly during the period of 1979–2002) were passed, amended, and often repealed. Among them, the **Law on Agrarian Reform** (1981) was promulgated as a core policy of the Revolutionary Regime regarding agrarian issues. This law governed the process of expropriation of large-scale, often under-utilized, land properties, and allowed the redistribution of these properties to small-holders (mostly former agricultural workers) either individually or under collective tenure form (Cooperatives), or to newly created large-scale production units (state farms). More recent legislation includes a **Law on Reformed urban and agrarian Properties** (1997), that set up the legalization process for agrarian reform lands, and a **Law on the Regularization/ Organization/ Titling of Spontaneous Human Settlements** (1999), that provides for some informal settlers to receive titles for the land they occupy.

Based on these regulations, four types of land rights:

- 1) **National or state lands** are defined as any lands that have not been transferred to private individuals, groups such as cooperatives and associations, or are not part of communal lands. One can note that currently, as many properties are not demarcated and/or registered, the localization and estimates of state lands are unavailable;
- 2) **Private lands** are owned by individuals or groups (such as cooperatives) or firms with various types of legal documents. In order to receive the benefit of private ownership rights recognized by law, private land must be formally demarcated and registered in the cadastre as stipulated by Law No. 509 (2004). However, one should highlight that in Nicaragua, a large amount of private lands are either not registered or not legalized (by legally recognized documents);
- 3) **Communal lands** are defined by Law No. 445 (2003) as *“the geographic area in the possession of an indigenous or ethnic community, whether it is under title of absolute ownership (dominium plenum) or not [...] comprising lands, sacred places, forest areas, [among other resources]”*. In communal lands, *“the collective property is constituted by the lands, waters, forests, and other natural resources contained therein which have traditionally belonged to the community, intellectual and cultural property, biodiversity resources and other assets, rights and securities belonging to one and more ethnic or indigenous communities”*; Law No. 445 states that

¹⁴ Arto. 614. Son bienes del Estado, todas las tierras que, estando situadas dentro de los límites territoriales, carecen de otro dueño (Código Civil)

“communal lands cannot be mortgaged, and are essential, inalienable and not attachable”. However, the process of indigenous territories’ demarcation and legalization is still on-going. Despite gains made, the continuing tenure insecurity caused by unresolved land claims and inadequate documentation of property rights continues to be problematic.

- 4) **Ejidal land** is land owned by municipalities; municipalities can control the use of *ejidal* land. *Ejidal* land can be leased but not sold. Like state land, localization and estimates of *ejidal* lands are unavailable.

Consequently, three forms of land tenure can be found in Nicaragua:

- **Ownership** can be individual or collective (in cooperative or communal regime). Land owners have the right to use the land, to exclude others from the land, and to transfer the land (inheritance, sale, etc.). However, ownership rights are subject to the State’s right of expropriation. On their property, land use is subject to Government land use planning (see later Law No. 217 and reform and Decree 90-2001);
- **Leaseholds** are formally permitted. The terms of leaseholds, including the length of time and permissible land uses, are governed by the agreement of the parties;
- **Informal occupations**, while considered contrary to formal rules (occupants are subject to eviction) are a form of land tenure that is commonly found. Different types of informal occupation are encountered depending where land is located (state/private/communal/*ejidal* lands) which create various levels of tensions on resources and with legal rights owners.

Regarding land uses, several policy documents also exist:

- The Constitution of Nicaragua (1987) states that the municipalities have political, administrative and financial autonomy, with further capacity that affects the socio - economic and environmental conservation and natural resources of its circumscribed territory. It is also recognized by the **Law of Municipalities** (Ley No.40) (1988) and its reform (1997);
- A **General Policy for Territorial Ordering** (2001) was declared by a Presidential Decree (Decreto No. 90-2001). This policy document was designed to support the decentralization of authority over land administration to local levels, as recognized by Law No. 40. Under these policies, municipalities have mandates and are responsible for land use management that include: (1) a municipal land policy leading to sustainable development and the rational use of natural resources; (2) a proposal to guide land uses at the municipal level; and (3) proposed measures and implementation guidelines to settle disputes related to land management. These policies are consistent with the **General Law on the Environment and Natural resources** (Ley No. 217) (1996) and its reform (2008), which gives the local authorities the mandate and responsibility for formulating land use management and environmental plans. However, decentralization of authority over land use planning has been slow, in part due to the history of control exercised by centrally driven state agencies.
- A **Presidential Decree** (1999) and its reform (2007) declared **Protected Areas** to preserve, manage, and restore the natural ecosystem in areas with historical, archaeological, cultural,

scenic, or recreational importance. Land falling under the protected areas' regime may be under national/ state, private, or communal property rights. It is in particular the case of the Bosawás –the largest protected area on Nicaragua, initially created as a Natural Reserve (1991), elevated as a Biosphere Reserve by UNESCO in 1997, a decision then ratified by the Government (2001), which area embarks several indigenous traditional territories (all within the N-H Sentinel Landscape).

- Guided by the strategic **National Human Development Plan** (PNDH, (2012))¹⁵ and the pursuit of the Millennium Development Goals (International Monetary Fund 2011), the Government developed an agricultural sector-wide strategy named **PRORURAL¹⁶ Inclusive**. Initially, it was created as a mechanism for coordinating and integrating the activities of the various Government agencies involved in agriculture and rural development and enlisting and harmonizing international support for these sectors. At present, PRORURAL Inclusive is the National Plan for Rural Development and a core policy document regarding rural areas. It shows the Government's intention to focus on agriculture, rural development, and food security, as the

¹⁵ In 2007, the newly elected Sandinista government put forward the existing Strategy for Economic Growth and Poverty Reduction (ERCERP) that later formed the basis for the 2008 National Human Development Plan (PNDH) as a "model of the power of the citizens". At present, the 2012-16 PNDH is the core policy framework of the Sandinista government. The operational goal of the PNDH is economic growth with increased employment and reduced inequality and poverty.

The PNDH is organized into four strategic dimensions: (1) reducing poverty and inequality (basically macro-economic policies); (2) developing social welfare and equity; (3) defending and caring for Mother Earth, environmental sustainability and forest development; (4) implementing a Caribbean coast development strategy. The focus of natural resources-related policies that used to be directed exclusively to the control, regulation, and protection of forests, has been changed to a positive societal attitude directed to the "care and conservation of Mother Earth and its natural resources", taking up the principle of defense of nature and "rational exploitation of natural resources" to both overcome poverty levels and preserve the natural heritage, "respecting the rights of indigenous peoples and ethnic communities". Consistent with this approach, Nicaragua was the first country to join the Universal Declaration of the Common Good of the Earth and Humanity, which is based on the principles of protecting and restoring ecosystems, with particular concern for biological diversity. In addition, the transformed curriculum for basic general education now includes formal education on the environment and the subject of tourism culture as a cross-cutting theme.

In addition, in 2007, Nicaragua formulated a National Climate Change Action Plan (*Estrategia Nacional Ambiental y del Cambio Climático Plan de Acción 2010-2015*, PANCC) based on a series of studies on vulnerability, mitigation options and climate change impact, with the objective to develop adaptation measures for the most vulnerable sectors of the economy, such as agriculture and water resources and to contribute to the mitigation of GHG, particularly in the forestry sector. Nicaragua has published its first National Climate Change Strategy. The Strategy was conceived with the help of UNDP and the Embassy of Denmark and the main vulnerabilities taken into account for Nicaragua and the main actions proposed are focused on extreme weather events, leaving aside the analysis of gradual climatic changes. It proposes a number of adaptation programs for the period 2010 to 2015.

NB: this Plan follows two other important plans regarding natural resources: the Environmental and Action Plan of Nicaragua (PAA-NIC, 1993) and the consecutive Environmental Plans of Nicaragua (PANIC, 2001-05, and 2005-11) that served, among other things, to promulgate the General Act on the Environment and Natural Resources (see later) which is still the main policy document regulating land use in rural areas.

There is also a Regional Strategy for the Northern Atlantic Autonomous Region (*Estrategia de la Región Autónoma del Atlántico Norte (RAAN), frente al Cambio Climático*) that has been approved recently by the Regional Council (Resolution No. 29-08-02-2012).

¹⁶ A National rural development initiative called PRORURAL was originally initiated under the Bolaños administration (2002-2007) and then readjusted and renamed into PRORURAL Inclusive in 2007.

engine for inclusive development of the country. It also provides with the major programs that brings the productive sector in rural areas together (agriculture, livestock, forestry, water; and climate change as a cross-cutting theme)¹⁷. The main programs of PRORURAL Inclusive are the following: (1) the National Program on Rural Agroindustry (PNAIR) that promotes rural agroprocessing¹⁸; (2) the National Forest Program (PNF), that promotes rational exploitation of forests; and (3) the National Food Program (PNA, better known as Zero Hunger/*Hambre Cero*) that promotes food production and productive investment in agriculture¹⁹. PRORURAL Inclusive also promotes distribution and sale of agricultural inputs, and storage and trading of products²⁰. All programs are clearly focused on small-scale producers²¹ (that are defined per agro-ecological territories and with some range of land area per farm), incorporating the poorest people and the formerly supposed marginalized people (women, afro descendant, indigenous, disabled, etc.).

- A **Law for the Promotion of Agro-ecological and Biological Production** (2011) has recently been promulgated and aims at establishing agricultural activities and practices that are environmentally friendly and socially, economically and culturally sustainable.

2. Land administration and institutions

The institutional structure of land administration is organized around several organizations:

- The **Intendence of Property** (PGR, <http://www.intendencia.gob.ni/>) is the primary organization responsible for decisions regarding land and property in Nicaragua. The Intendence is an autonomous state body that acts as a specialized and technical intendence of the Attorney general's office of the Republic) that includes several offices, including the **Rural Titling Office** (OTR), which is responsible for issuing and signing titles (Article 8 of the Decree No. 130-2004

¹⁷It does not include the sectors of tourism and energy, yet according to the need for intersectorial actions, these sectors can be invited to participate in the meetings and negotiations. Another important mechanism at the national level is the Production and Competitiveness Cabinet that consists of all the agencies of the government and makes decisions related to the roles of the different actors, taking into account the local stakeholders.

¹⁸ PNAIR emerged in 2010 as an alternative to the previous export-driven model focused more on medium- and large-scale producers. In this, agribusiness is defined as the link between agriculture, forestry, fishing, hunting and industry, looking to generate, increase and retain within rural areas the added value of primary production of the rural economies and of scale fisheries through the implementation of post-harvest activities. Consequently, PNAIR supports development of the skills of small- and medium-scale producers, promotion of partnering to achieve the formation of organized groups and implementing best practices for the protection of the environment. It also defines the state's role as a facilitator through public institutions that allow expansion of access to financial resources through credit or incentives for the promotion of value-added production and fostering the values of solidarity, complementarity, equity and transparency.

¹⁹ Zero Hunger is often presented by external evaluators as the most successful programs of the Food Security and Sovereignty Strategy for rapidly satisfying the food requirements of households living in extreme rural poverty.

²⁰ The government reactivated the National Basic Foodstuffs Supply Company (ENABAS) which has been dismantled during the former liberalization period-, to gather basic foodstuffs by purchasing from producers at fair prices, encouraging private agents to pay similar prices. Consumers are also supplied with basic foodstuffs at fair prices and a reserve of basic foodstuffs is guaranteed to protect the population when prices rise.

²¹ Under Bolaños administration, PRORURAL was mainly focused on medium- and large-scale producers and the policies were mostly executed by private service providers, including NGOs.

(2004)), resolving claims for indemnification or return of properties, and for meeting all administrative matters relating to land conflicts resolutions, compensation and regularization of renovated, and land reform property (Article 105 de la Ley No. 278 (1997)).

- The **Nicaraguan Institute of Territorial Studies** (INETER, <http://www.ineter.gob.ni/>) is an autonomous organization under the Presidency that is responsible for the physical cadastre in both rural and urban areas, in particular with the General Direction of physical cadastre.
- The **Public Registries** (*Registros Públicos de la Propiedad Inmueble y Mercantil*) (2009), which are under the **Supreme Court of Justice**, are responsible for maintaining land registration records. The Public Registry has offices in each of the departments of Nicaragua, as well as in the two Autonomous Atlantic Regions (RAAN and RAAS).

Regarding land use regulation, the General Policy for Territorial Ordering provides for the dispersal of land administration mandates and responsibilities across several organizations, including:

- The **Ministry of Environment and Natural Resources** (MARENA, <http://marena.gob.ni/>), created in 1981 as an Institute of Natural Resources (*Instituto de Recursos Naturales*, IRENA) and elevated as a Ministry in 1994, is the national environment and natural resources' management and planning authority. MARENA is defined as the regulatory authority responsible for developing and implementing environmental policy. Among other responsibilities it is mandated to oversee environmental impact assessments and protected area management plans. It is thus one of the main authorities that govern natural resources at the national level;
- The **Ministry of Family, Cooperatives, Community, and Associative Economy** (MEFCCA, <http://www.economiafamiliar.gob.ni/>), recently created in 2012, is the state agency which seeks to strengthen micro, small and medium businesses, and it is dedicated to promoting cooperatives and food sovereignty through the transfer of new technologies and the encouragement of sustainable productive practices. It absorbed the former Rural Development Institute (*Instituto de Desarrollo Rural*, IDR) and the former Nicaraguan Institute for Small and Medium Businesses (*Instituto Nicaragüense de apoyo a la Pequeña y Mediana empresa*, INPYME), an entity formerly dependent of the Ministry of Development, Commerce, and Industry (*Ministerio de Fomento, Industria y Comercio*, MIFIC);
- The **Ministry of Agriculture Livestock and Forestry** (MAGFOR, <http://www.magfor.gob.ni/>), is the state agency in charge of the promotion of the development of agriculture and forestry by formulating, monitoring and evaluating the policies, strategies and programs of the farming and forestry sector (the forestry part being in charge of INAFOR). It was initially created in 1952 as the Ministry of Agriculture and Livestock (*Ministerio de Agricultura y Ganadería*, MAG), transformed into a Ministry of Agriculture and Livestock Development and Agrarian Reform in 1981 (*Ministerio de Desarrollo Agropecuario y Reforma Agraria*, MIDINRA) after having incorporated the Nicaraguan Agrarian Institute (*Instituto Agrario Nicaragüense*, IAN). It was re-established as a Ministry of Agriculture and Livestock (*Ministerio de Agricultura y Ganadería*, MAG) in 1990 and finally evolved in 1998 as the current MAGFOR. In 2012, part of the mandate and programs of the MAGFOR were transferred to the MEFCCA, in particular the Programs “Zero Hunger” and “Zero Usury”.

- The **Ministry of Development, Industry and Trade** (MIFIC, <http://www.mific.gob.ni/>) is the state agency in charge of the promotion of the development of trade and industry and also in charge of concessions (forestry and mining among others).

Under Law No. 40 and its reform, **Municipal authorities** have responsibility for formulating land use plans, in coordination with the **Nicaraguan Institute for Municipal Development** (INIFOM, <http://www.inifom.gob.ni/>). However, decentralization of administration and authority for land use planning to municipalities has been slow, and the supporting institutional structures are not fully formed (Saldomando 2011).

Under Law No. 28 and Law No. 445, **traditional indigenous and ethnic communities' authorities at the local level** (syndics and judges or *wihtas*) are granted the right to oversee the access to land by indigenous and ethnic community people in their traditional territories.

In 2007, President Ortega installed Citizen Power Councils –renamed in 2012 **Cabinets of Family, Community, and Life** (Gabinetes de Familia, Comunidad y Vida)-, at neighborhood levels throughout Nicaragua (except in the Autonomous Regions). The government identified the Cabinets as its preferred civil society partner in implementing its political agenda, including decisions on infrastructure development, local regulatory authority, and access to low-income housing. Local leaders in rural communities allege that Cabinets are politically motivated and distinguish between government supporters and others in the delivery of benefits. On several occasions, Cabinets members have taken physical possession of property either through force or the threat of violence, and municipal officials, court officers, and Nicaraguan National Police have been unwilling to intervene in these cases. Constitutional experts, human rights activists, and nongovernmental organizations (NGOs) have criticized the use Cabinets because they are unelected, appear to operate outside the law, and displace NGOs (Almendárez 2009).

B. Honduras

1. Legal framework

Several core policy documents state legal rules regarding rights over land:

- The **Constitution** of the Republic of Honduras (1982) guarantees real property rights. It sets up restrictions for foreigners to buy property (Art. 73). Article 340 declares the technical and rational exploitation of natural resources to be of public need and utility and its use, as well as property rights, is subject to the social interest: *“the technical operation and rational use of natural resources of the Nation [is useful and of public need]. The State regulates its use, according to the social interest and determines the conditions of its attribution? Permission? to individuals. The reforestation of the country and the conservation of forests is declared of national convenience and collective interest.”* Also, Article 431 stipulates that *“law may set restrictions, modalities or prohibitions for the acquisition, transfer, use and enjoyment of state and municipal property, for reasons of public order, and social interest of national convenience”*.

Consequently, the Constitution entrusts the State with the power to regulate how natural resources are allocated and used in order to protect both individual and national interests. Article 346 also enacts “*measures to protect the rights and interests of indigenous communities in the country, especially of the land and forests where they settled*”; which is the only formal recognition of such rights for indigenous people in the Honduran legal framework.

- The **Civil Code** (2011) allows for real property purchase, acquisition, donation, use, rent, mortgage, lien and legal protection.
- The **Property Law** (2004) was passed to improve the registration and cadastre processes. Specifically, the institutional and legal framework was altered to create a more efficient system of property rights to activate capital markets and to regularize the situation of properties under dispute. It was recently reformed (2013).
- The **Law for Agrarian Reform** (1974) makes a distinction between public land and private property (Articles 6, 12 y 23). The former includes “*original property*” or waste lands or marginal lands, and land grants from the Spanish Crown that belong to the state because they are within territorial limits and do not have an owner (Article 618 Civil Code). Also included are communal lands administered by the municipalities and land acquired directly by the state or through decentralized institutions in the public administration. Privately owned lands are those whose ownership pertains to individuals. Both public lands and private property not being used in harmony with the social function of property as defined by the Constitution are affected by the objectives of agrarian reform and subject to redistribution to farmers and community groups. According to Articles 348 and 349 of the Constitution, some principles are stipulated regarding expropriation.
- The **Law for the Modernization and Development of the Agricultural Sector** (LMDSA) (1992) introduced measures aimed at boosting land markets, simplifying expropriation and restricting land invasion. The LMDSA reformed certain aspects of the Agrarian Reform Law, affecting farmers in their objectives to have access to land. The cause for indirect (leasing) or deficient usage was eliminated and fallow land had a term of 2 years. LMDSA also defines that properties can be bought by the state, establishes a maximum of 200 ha to be titled, and also allows the titling of parcels of land one hectare or larger, while previous legislation had required they be at least five hectares to be titled. Further, LMDSA allowed women to receive land titles in their own names, a practice previously restricted to widows and single women.

As mentioned, the only formal recognition of rights of indigenous people in Honduras legal framework is stated in Article 346 of the Constitution. In 1994, Honduras signed the **Indigenous and Tribal Peoples Convention ILO 169**²², one of the few Latin American countries to have done so. However, struggles over traditional land rights by indigenous groups have continued. The ongoing conflicts over land have been further fuelled by 1998 constitutional amendments that favor landownership by large-scale

²² Convention No.169 is a legally binding international instrument open to ratification, which deals specifically with the rights of indigenous and tribal peoples. Today, it has been ratified by 20 countries. Once it ratifies the Convention, a country has one year to align legislation, policies and programs to the Convention before it becomes legally binding. Countries that have ratified the Convention are subject to supervision with regards to its implementation (ILO).

investors and agro-industrialists. In many cases Indigenous land titles are poorly defined, especially in documents that date back to the mid-19th century. Indigenous and non-indigenous communities continue to criticize government's alleged complicity in the exploitation of timber and other natural resources on these lands.

From these policy documents, land in Honduras may be held by the state, by private landholders or in *ejidal* (communal) holdings. Land may also be held under usufruct title and leased:

1. **National/state land** are legally the property of the State of Honduras, recognized by the Constitution. Over time, however, a variety of users have come to occupy large sections of state-owned land and consider the land their own. Many of these claims are upheld by usufruct titles issued by local authorities
2. **Private lands** cover a large percentage of the total land in Honduras. However, only a small percentage of the total population owns land privately. Traditional rights of ownership, including exclusive use and transferability, are generally the province of large landowners and multinational corporations. However, a growing number of smallholders have received title through land titling projects
3. **Ejidal lands**, largely excluded from land markets, refer to communal lands awarded to a municipality or indigenous community for the use of inhabitants of the jurisdiction. Many *ejidal* lands have been occupied by families for extended periods of time and these households have subsequently been awarded usufruct titles by local officials. While previous legislation had excluded *ejidos* from the land market, in 1992 the LMDSA removed those restrictions, as long as the land had been fully titled. Indigenous lands are owned communally, providing land use rights to individual members of the group.

Consequently, three land tenure forms can be found in Nicaragua:

- **Ownership** can be individual or collective. In the case of land granted by the agrarian reform and due to poor record keeping, delineation and confirmation of title is challenging or impossible;
- **Usufruct** is recognized and local authorities may issue usufruct titles for public lands. However, few smallholders who once had only limited rights to their land have received individual or communal title under government land titling programs;
- **Leasing** is recognized and under the LMDSA, fully titled private and Reform Grant land may be leased. Collectively owned lands that have subdivided and awarded rights to individual members may also be leased.

Regarding land use regulation, various policy documents exist:

- The **Policy for Territorial Ordering** (2003) provides with a national policy on land use planning as part of the national planning that promotes integrated, strategic and efficient management of natural, human and technical resources in the country. The law also promotes the implementation of policies, strategies and development plans oriented toward sustainable

development (article 1). The law defines land use planning as “an administrative instrument to strategically manage the relationship between human and natural resources with the physical environment seeking integrated and balanced use in the entire country to promote growth of the economy” (article 2). In order to avoid institutional conflicts the Law establishes that all government secretariats will coordinate efforts, will make joint decisions will and will provide financial, technical or administrative support to other secretariats when necessary (article 29). In case of institutional conflicts, the law provides the following mechanisms: conciliation and arbitration; administrative action; legal action or legislative interpretation. In addition the Law establishes public participation in decision-making related to land use planning through any institutional office, public hearings, consultation meetings and any other mechanism stated in the **Municipality Law** (articles 35 and 36) (1990).

- The **General Law for Environment** (1993) sets forth as its general objectives the protection of the natural environment, conservation and rational use of natural resources, which are defined broadly to include cultural, historical and social resources, and the prohibition of pollution. It is the most important law relating to protected areas. This law establishes the framework for designation, administration and oversight of protected areas (1997), including national parks. Titles II to IV set forth the various categories of resources protected under the law, and include: wild flora and fauna, forests, soils, agricultural areas, urban areas, coastal and marine resources, the atmosphere, minerals and hydrocarbons, solid and organic wastes, agrochemicals, toxic and dangerous pollutants, and historical, cultural and tourism resources. Article 36 establishes the creation of the Protected Areas System for the administration of protected natural areas that are subject to zoning and management plans. Article 38 states that ‘owners of private lands and inhabitants of protected areas are allowed to engage in productive activities according to specific technical norms and the land use designation established in the decree that declares the area.’ In theory, this means that owners and inhabitants must follow the general rules established for their activities and any rules specifically established for those activities in protected areas of different designations. The principal conflicts or loopholes identified are: the management of human settlements in buffer zones for protected areas: the legislation talks of adequate use of the soil, but there is no clear definition of what “adequate use” of a protected area is; the presence of people within protected areas continues to be a topic of conflict.
- The **Law for Sustainable Rural Development** (2000) that creates the National Program for Sustainable Rural Development (PRONADERS) focuses on the development of the poorest areas that are also areas with high levels of ecological vulnerability, in particular through mechanisms aiming at improving decentralization and the participation of rural communities.
- The **Special Law for Environmental Education and Communication** (2009) focuses on education on protection, conservation, restoration, sustainable environmental management and risk management and links the education and communication with management and disaster risk.

2. Land administration and institutions

The institutional structure of land administration is organized around several organizations in Honduras:

- The **Property Institute** (IP, <http://www.ip.gob.hn/>) is a decentralized agency of the Presidency, which operates the new folio real registration system. Landowners must register real property and transfers of real property with the IP. The IP has jurisdiction over 22 registries, including one in each of Honduras' 18 Departments. The IP also oversees the **Executive Directorate of the Cadastre and Geography**, and the **Directorate of Property Registry**, which is regulated by the Supreme Court and is present in each department.
- The **National Commission for Property Policy and Regulation** (CONAPON), created by the Property Law (2004), was established as a consultative body to guide national property and land administration policies. The Commission is made up of representatives from private and public sector institutions, all of whom are appointed by the President.
- The **National Agrarian Institute** (INA, <http://www.ina.hn/>) is responsible for the use of national lands, agrarian reform and the adjudication of land invasion claims. INA also oversees the regularization of tenure for indigenous groups under the Property Law. INA focuses on: 1) promulgation of Decree 18-2008 to solve national delinquent land, 2) strengthening business peasant production units, 3) allocation and land titling, 4) cadastral survey of areas to facilitate the certification process, 5) purchase of land to meet the demand of the rural sector.
- The Policy of Territorial Ordering created a **National Council on Land Use Planning** (CONOT)²³, a consultative and advisory office responsible to propose, coordinate and follow up land use strategies and plans, as well as to promote initiatives to implement programs, projects and actions on land use planning (article 9). The CONOT is assigned to the Secretariat of Governance and Justice (article 11), and responsible for implementing and enforcing the Law, promoting legal and technical proposals and initiatives and coordinating with the President and the Council of Ministers (article 12). CONOT is assisted by an operations office, the Executive Committee on Land Use Planning (CEOT in Spanish), that will be responsible for implementing and following up the actions of CONOT (article 14).
- The **Secretary of Agriculture and Livestock** (SAG, <http://www.sag.gob.hn/>) is the state agency responsible for directing and coordinating the public agricultural sector. Its principle function is to formulate and follow up on compliance with development policies for agricultural and forestry activities. The Secretary of Agriculture has the responsibility to issue resolutions regarding declaring protected areas and executive resolutions that identify protected species, animals that may be hunted, moratoriums, hunting seasons, etc.
- The **Secretary of Natural Resources and the Environment** (SERNA, <http://www.serna.gob.hn/>) is the state agency responsible for implementing and enforcing environmental legislation in Honduras. It is also responsible for developing, coordinating and monitoring compliance with national environmental policies, and that there is coordination between institutions on environmental matters, energy and mining development.

²³ The Law also creates Department Councils of Land Use Planning in each Department (Province), which are coordinated by the Department Mayor (article 16). The Department Councils will coordinate and implement local policies and strategies of land use planning; establish mechanism for evaluation and follow up of land use plans; establish planning strategies of the Municipalities within its Department; and implement actions requested by CONOT.

- **Municipal authorities** coordinate their activities with the SAG which has authority to design integral land use planning or determine land use plans according to economic demographic and social factors, however there are no clear procedures to do it. Municipalities also have authority to promote environmental protection and conservation pollution control preservation of historic places and a host of other functions. Municipalities shall participate in the development of natural areas in accordance with the goals of community development and environmental protection. The regulations on this point state that the municipalities shall be independent of the national organ or entity, but then state that they are subject to policy goals and strategy at the national level, and that their plans, programs, projects, etc., should be performed within national priorities and goals. Articles 59-62 of the Environmental Regulations enumerate the relationship between the municipalities and SERNA. Generally, the regulations require that SERNA should assist the municipalities in implementing the Environmental Law, by providing information, technical assistance and guidance. There is a clear decentralization policy which delegates many responsibilities to Municipalities, therefore there should be clear coordination channels between national institutions and local governments. However, there is a need to strengthen Municipalities so they can carry out their environmental functions and establish appropriate coordination mechanisms for a better decision-making at the local level.

3. Legal and institutional frameworks for the forest sector

A. Nicaragua

1. Legal framework

In Nicaragua, the key policy documents that set the legal framework regarding the rights and access to forests and trees are the following:

- The **Constitution of Nicaragua** (1987) considers natural resources public domain, and therefore, the government should regulate their allocation and uses. Article 102 states that: *“Natural resources are part of the national heritage. The State is responsible for the preservation of the environment and the conservation, development and rational exploitation of natural resources; the State may enter into contracts for a sustainable exploitation of these resources, when there is a national interest.”* However, it recognizes the rights of the Communities of the Atlantic Coast to use and enjoy the communal waters and forests, (one should note that it does not recognize property rights over these resources) and to create programs which further their development and ensure the rights of these Communities to organize themselves and to live in the ways which correspond to their legitimate traditions (Articles 8, 11, 49, 89, 90, 91, 92, 121, 180, and 181).
- The **Autonomy Statute** (Law No. 28) (1987) states that *“Autonomy makes possible the effective exercise of the right of the Communities of the Atlantic Coast to participate in working out how to make use of the region’s natural resources and how to reinvest the benefits from these in the Atlantic Coast and the nation”*. Article 8 recognizes that the Regions administrative bodies have

the general faculties “to promote the rational use and enjoyment of the communal waters, forests, and lands and the defense of their ecological system”; Art.9 recognizes “the right to own communal lands [where] mineral, forest, fishing, and other natural resources [are rationally used], and said use should benefit the inhabitants equitably, by means of the agreements between the Regional Government and the Central government”; Art.11 stipulates that “the inhabitants of the Communities of the Atlantic Coast have the rights to use, enjoy, and benefit from the communal waters, forests, and lands, within the plans for national development” (one should note that, alike the Constitution, Law No. 28 does not recognize ‘private’ property rights over natural resources associated to communal lands; seen as they consider them state property).

- However, **Law No. 445**, as previously stated, recognizes “the full recognition of communal property ownerships rights, the use, administration and management of traditional lands and their natural resources, through the demarcation and titling of the same”, which is partly discordant with the Constitution and Law No. 28. The law No. 445 also provides a procedure by which traditional community authorities can authorize the sale of natural resources to third parties, provided that the Community Assembly approves the sale. Resource extraction also requires community approval or a process of negotiation involving indemnification and community participation.

The main policy documents regulating trees and forest usage are the following:

- The **Law of Conservation, Fomentation and Sustainable Development of the Forestry Sector** also called **Forest Law** (Law No. 462) (2003) has as objective the establishment of a legal regime for the conservation, promotion and sustainable development of the forestry sector. The fundamentals are the forest management of the natural wooded area, the promotion of plantations, and the protection, conservation and restoration of forest areas at the national level. (one of its main elements is also the list of trees that cannot be felled anymore) The Law created a National System of Forestry Administration (SNAF) and the National Forestry Commission (CONAFOR) (which will both be discussed further under 3.A.2.) and established national protected areas. The Forest Law provides for the organization of forest districts and development of local forest management plans.
- The **Law Prohibiting Logging** (Law No. 585) (2006) banned the export of timber, although a **Presidential Decree** (No. 48 of 2008) (2007) allowed the collection of trees fallen by Hurricane Felix in the RAAN for export. Exported timber must be less than eight inches thick, regardless of its length, and is subject to a fee assessed on the value of the lumber. Requests for permission to cut timber must be accompanied by a forest management plan and permits are granted on the basis of an operating plan. Precious woods must be processed in sawmills authorized for that purpose.
- The **Special Law against environmental and Natural Resources crimes** (2005) aims at defining crimes related to the harm of conservation, protection, management, defense of natural resources. Chapter II identifies in particular such crimes, like: soil, water, air, noise pollution, manipulation, transportation of toxic, dangerous or polluting substances, etc. The Law specifies

the sanctions (administrative sanctions, economic ones and up to 4 years of jail) to be applied in case of environmental crimes. Chapter IV refer to crimes against natural resources (Art. 18-35) such as natural resources' illegal use, deviation of water sources, various types of fishing techniques, hunting of protected animals, forest fires, illegal tree logging, transportation and trade of illegal tree cutting, etc. In that case, penal sanctions might be applied.

- In 2008, the Government adopted a **National Policy for Sustainable Development of the Forest Sector** (Executive Decree No. 69-2008) (2008), which has objectives of environmental protection and conservation and sustainable development of the forests to support livelihoods and economic growth. It replaced the Forestry Action Plan (1993).
- Specific components of the **National Forest Programme of PRORURAL** Inclusive include a national reforestation campaign, a forest protection program, support for participatory forest management, and a focus on the management of protected areas and biodiversity. Specifically, the National Reforestation and Natural Resources Restoration Crusade trains community reforestation brigades, Cabinets of Family, Community and Life, and local citizens participating in forestry programs and supporting the production of plants through tree nurseries. Municipal governments are responsible for implementing the majority of the reforestation projects.

All trees and forests, as a Heritage of the Nation (as stated in the Constitution), are subjects to some degree of regulation. However, different rules of usage over forest resources can be found, depending of the type of forest and their localization (specified in law 462?):

- The usage of **Natural forests** always requires a usage permit²⁴, which is under the responsibility of the owners or those who exercise the rights over the forest. The Forest Law does not differentiate the type of owners (private or collective/indigenous community). The Law states that *"the owner of the [forest] soil has right to the domain of the forest width existing over it and its derived benefits, being responsible of its management, according to what is established by Law"* (Art. 2). In Nicaragua, forestland is mostly *de facto* privately held through the process of individualization of communal lands or state grants of forestland to former combatants. Currently, the majority of the forestland under private ownership is found in the RAAN and held by indigenous communities²⁵. Because indigenous people and ethnic communities' rights are formally recognized, they have some degree of security of access and use of the forest. However, demarcation and titling is occurring only slowly and disagreements over control of

²⁴ However, a significant percentage of logging occurs either without a permit or the activity extends beyond the restrictions of the permit. For example, loggers with permits cut timber outside the area permitted, and commercial permits are granted to locals who are only entitled to receive household permits → so if they received the permit (even though they shouldn't have received it) they are actually legally commercializing it.

²⁵ However, situations have been documented (where?) on forestland that has also been sold by local leaders and granted by the state to non-indigenous Nicaraguans (*mestizos*) migrating to the Atlantic region to develop and profit from forest resources. Many of the transactions in communal forestland are prohibited under the Law of Communal Property Regime, but have been difficult to identify and void?, creating confusion as to rights of access and use of the forestland. Under the law, indigenous and ethnic communities have communal rights over forest resources (rights of access, withdrawal, management, and exclusion, but not rights of alienation, meaning that rights are non-transferable and non-mortgageable).

natural resources between grassroots and higher-level (territorial) political interests are common. Furthermore, control of forest access and use by local governments is no guarantee of community control or benefit sharing (Larson and Lewis-Mendoza 2011; Larson and Soto 2012). In some cases, local government officials have entered into agreements with private commercial enterprises without local community knowledge or participation in negotiations or benefits, following the on-going work conducted by the research team;

- **Forestry Plantations** do not require permit for its establishment and maintenance, but they must comply with the requirements of registration at the moment of the establishment of the plantation and its usage by the owners of the forest lands (in particular to obtain a certification of origin of the product for transportation finalities);
- **Forests and trees located in Protected Areas** are subject to the regulations in the actual legislation of this matter. In particular in state protected areas, tree cutting is prohibited in almost any of its modalities, even if the application of the Forest law, in particular in National Reserves that overlap indigenous territories, thereby enters in contradiction with Law No. 28 and 445 on accounts of limiting the autonomous governments responsibility in determining rational use of natural resources.
- Forest Areas of Municipal Protection are also often under strict regulations, similar to protected areas.

Some specific norms were also promulgated regarding the forest sector. In addition, specific rules regarding the Bosawás Reserve apply.

In addition, the Government is also creating a National Strategy to reduce carbon emissions through the prevention of deforestation and degradation (REDD) and establish a foundation for participating in the carbon market (UN-REDD Programme 2012) As well as a national fund 'Fondo Nacional de Desarrollo Forestal, FONADEFO', launched with the ley 462 to support the rational use of forestry resources (www.fonadefo.org). The World Bank-supported Forest Carbon Partnership Facility is supporting Nicaragua's development of its Readiness Proposal, which sets out a plan to develop the systems and policies for reducing emissions from deforestation and forest degradation, forest carbon stock conservation, sustainable management of forests and enhancement of forest carbon stocks (REDD+). In January 2011, Nicaragua submitted its draft Readiness Proposal, and in June 2013 the Forest Carbon Partnership Facility published some recommendations for the further development thereof.²⁶

2. Trees and Forest administration and institutions

The agencies included in the National System of Forestry Administration are the following:

- The **National Forestry Commission** (CONAFOR) is the instance of the highest level and forum for concertation on the forestry sector, which will have participation in the formulation, follow up,

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http://www.forestcarbonpartnership.org/sites/fcp/files/2013/june2013/Nicaragua%20FCPF%20REDD%20Readiness%20Progress%20Sheet_March_2013_Finale_rev.pdf

control and approval of the politics, the strategies and other regulations that are approved in forestry matters.

- The **MAGFOR** has authority over the forestry sector, for which it formulates and elaborates regulations in collaboration with CONAFOR. . MAGFOR is responsible for: developing agricultural and forestry development policies; creating proposals for environmental protection programs (outside of protected areas) and coordinating the implementation of those plans; and creating proposals for the delimitation of agricultural, livestock, forestry, agro-forestry, aquaculture, and fishery development zones.
- The **National Institute of Forestry** (INAFOR), under the sector rectory of the MAGFOR, has the objective to supervise the compliance of the forestry regime in the entire national territory. INAFOR is responsible, among others, for the vigilance and inspection of the sustainable use of the forestry resources, establishing politics, corrections and applicable sanctions according to the Forest Law, and for the execution of the Forestry Development Policy in Nicaragua, in particular to approve the use permits and supervise forestry management plans.
- The **MARENA** works with local populations in nationally protected areas to achieve conservation goals. In the protected areas, it becomes responsible for the task of emitting logging permits
- The **MIFIC** is responsible for granting forest concessions on national lands.

In addition, one should note that:

- **Municipal authorities** have the authority to develop, conserve, and control the use of natural resources, including timber and other forest products. However, the authority to issue permits for logging is held by INAFOR (except in protected areas): private forestland owners must obtain household permits to log small amounts of timber, and a management plan is required for concessions to log and commercialize larger amounts. Local municipalities can assign all tariffs, taxes, and fees for logging, and are also charged with restricting and monitoring logging. At least that is what is presented in Law No. 40 and its reform. Some municipalities draft ordinances governing the use of natural resources in their territory(Fréguin-Gresh, Huybrechs et al. accepted), that can have their effect (Larson 2002; Larson 2004).
- **Traditional indigenous and ethnic communities' authorities at the local level** (syndics and *wihtas*) must be consulted before the state grants a concession and are entitled to 25% of the permit fees paid by concessionaires²⁷. Most concessions are granted without local approval, and local officials are not advised of the terms of the concessions granted.

²⁷ In practice, however, only a few local community authorities have been able to participate meaningfully in the concession process and they frequently fail to receive their 25% share of the fees paid

B. Honduras

1. Legal framework

Legislation on the use and management of forest resources in Honduras is quite extensive. Some of the most important laws include:

- The **Law for the Modernization and Development of the Agricultural Sector** (LMDSA) (1992) establishes the need for a management plan to take advantage of the commercial forestry uses and permit the sale of national forest timber at auction. It produced profound changes in the sector, recognized the land owners' right to own the forest on their land, allowed the participation of foreign capital in forestry operations, and excluded the public sector from trading and industrializing forest products, which were consequently reserved for the private sector. LMDSA defines that forest land will not subject to impairment, defines that logging is a function of the private sector, sets the mandatory forest management plan.
- The **Law for Forest, Protected Areas and Wildlife** (2007) defines forest areas and provides for more sustainable use of forest resources. The law provides more resources for enforcement of forest regulations, as well as harsher penalties against those who commit forest-related crimes.
- The Articles 45, 46, 47 of the **General Law of Environment** (1993) that states that forests should be used in a sustainable manner, also establish that forestry resources should be managed and used according to the principle of protection of biodiversity, sustainable use and multiple use.
- The **Cloud Forest Law** (1987), which defines specific cloud forests as National Parks, wildlife refuges and biological reserves and declares that they are protected (1992) in perpetuity. It also states that farms located in buffer or special use zones of protected area should be regulated under the management plan of the protected area;
- The **Law for Sustainable Rural Development** (2000) promotes the participatory management of forests.
- The **Criminal Code of Honduras** (1983) includes a chapter on environmental crimes, however this chapter was annulled after the law entered into force. *"Congress annulled the provisions on environmental crime from the Criminal Code only two months after its approval. We need to apply other laws to trial criminal cases or use other similar provisions from the Criminal Code. For example, in the case of illegal logging, we prosecute the violators for the crime of 'providing false information to a government official'."*

There are two main types of forest tenure in Honduras:

- **Public Forests**, including state-owned forests, forests owned by municipalities (including *ejidos*) and any forests granted in concessions. All forests within the national territory that are not owned by an individual or entity are public forests.
- **Private Forests** belong to individual owners or in trust, held by indigenous tribal communities; both should be with legitimate title and registration. With the aim of regularizing forest tenure, the Forest Law contains a procedure that could result in forfeiture of control of forest land to

the state if irregularities of possession or occupation exist. Individuals and tribal communities privately own 1.75 million hectares of forest.

Indigenous groups have rights to forests on lands that they traditionally inhabit. Because the forest regulations have not yet been promulgated, the extent of their rights is unknown.

2. Trees and Forest administration and institutions

The institutional structure of administration of the forest sector is organized around several organizations in Honduras:

- The Forest law abolished the State Forest Administration-Honduran Corporation of Forest Development (AFE-COHDEFOR) - a semi-autonomous entity, with an oversight board comprised of various institutions in the Central Government and the private sector, responsible for implementing national forestry policies and monitoring the use of natural resources, at the same time guaranteeing their protection and conservation-, and the Department of Protected Areas and Wildlife (DAPVS) and established the **Institute of Forest Conservation** (ICF, <http://www.icf.gob.hn/>) in their place in 2007. ICF promulgates regulations, executes national policy on forest development and conservation and issues permits for forest extraction to corporations and individuals. It is specifically charged with implementing the **National Forest Program** (PRONAFOR). Use of forestland is regulated by the Forest Law and subsequent regulations promulgated by ICF. Under the General Law of Environment, the IFC grants licenses to individuals or corporations for logging.
- The **National Forest Consultant Committee** (COCONAFOR) and the **National Committee for PRONAFOR** (CONAPROF) work with the ICF in forestry management, planning and administration.
- COCONAFOR is also the seat of the **Honduran Forestry Agenda** (AFH, <http://agendaforestal.org>), an agency that has worked to develop national forestry priorities, in coordination with the ICF.
- Article 21 of the Forest Law calls for the creation of national, departmental, municipal and community-level **Forest, Protected Areas and Wildlife Consultation Committees** to ensure local information from the field flows up to the national level and is acted upon. The committees are expected to monitor both compliance and performance of the various stakeholders in the sector.
- Article 47 of the Forest law states that **Municipalities** shall participate in the administration of the National Forestry Law.
- The **Office of the Environmental Prosecutor** was created in 1994 as a professional, specialized and independent office from all branches of the Government. Its main responsibility is to investigate crimes about forest violations, contamination violations, crimes related to water sources and protected areas (that are sanctioned with 3 to 10 years of jail), and carry out all criminal public actions. The objective of the Office is to *“collaborate with the protection of the environment, ecosystems, minority ethnic groups, preserve the archaeological and cultural patrimony and any other collective interest.”* The Attorney General, who is elected by the National Congress, is the highest authority of the Office. It is responsible for defending the

interests of society when the dispositions on natural resources and the environment are infringed and for filing lawsuits in relevant cases.

4. Legal and institutional frameworks for the water sector

C. Nicaragua

1. Legal framework

In Nicaragua, the core policy documents the legal framework for rights and access to water:

- As previously stated, the **Constitution of Nicaragua** (1987) considers natural resources (among which water) public domain, that should be publically regulated. Consequently, it provides that the state is responsible for the management of national waters. The Constitution also recognizes and guarantees rights of indigenous and ethnic communities to the use of water on their communal lands, like it does regarding trees and forests (see previous section).
- The **Civil code** (1904) recognizes water as a public good, but adds that its regulation depends on the regulatory framework of private property land (Barrios and Wheelock 2005).
- Within this legislative framework The **National Water Policy** was enacted by a Presidential Decree (2001), but its principles have never been fully translated into actual water management practices. Nevertheless, it establishes a number of guiding principles that were taken up again in the water law, such as: recognition of the Dublin principles; water is in the public domain and is owed by the state; water is a strategic resource; human consumption is the priority use; adoption of preservation and prevention criteria; proposition of the development of a water rights system; and polluter-pay and user-pay principles are used (Novo and Garrido 2010).
- These principles were subsequently reflected in the **General National Water Law** (2007) that currently governs the management and allocation of water resources in the country. The Law No. 620 recalls that water is in the public domain and incorporates the principles of integrated river basin management and decentralized management of water resources. It is consistent with Law No. 40 and Law No. 28, which give municipalities and regional indigenous authorities responsibility and authority over water resources, and even to smaller entities, through the CAPS (see later).
- The goals of the **National Human Development Plan (PNDH)** (2012) for the water sector are to: (1) strengthen the administration, regulation, and organization of the sector; (2) mobilize donor resources in an organized and systematic manner; (3) promote proper management of water resources; (4) provide adequate maintenance to the systems, equipment, and infrastructure; (5) encourage and promote citizen, entrepreneurial and social responsibility towards the sector; and (6) promote the development and monitoring of water quality and stimulate the social, environmental, and financial sustainability of the strategy. In rural areas, the PNDH includes an investment program intended to restore and expand water infrastructure, including installation of alternative systems such as mini-aqueducts, and a program to include citizens in decision-making and implementation of water systems and operations. In urban areas, the Government

plans to rehabilitate damaged infrastructure, promote citizen responsibility for maintenance of water infrastructure, and implement a plan to reduce water pollution. (USAID country profile)

Under the Law No. 620, people have the right to water for domestic purposes. The state grants concessions, licenses, and authorizations for other water uses. Water rights are generally available for periods of 5–30 years, and the law provides some guidelines for the award of rights. However, water rights under the Law are generally not issued, and water for irrigation is often considered an open access resource. An important way for accessing potable water in rural areas is through wells that can be constructed by the government or NGOs.

2. Institutional structure for water management

The Law No. 620 provides a framework for the institutional structure for water management, regulates the issuance of permits, defines the rights and obligations of water service users, prohibits privatization of water as a resource or for drinking water services, and provides for the provision of water to the poor at affordable prices.

- The law created a **National Water Authority** (ANA, <http://www.ana.gob.ni/>), a decentralized entity with administrative and financial autonomy, which is responsible for planning and management of national water resources, maintaining a public registry of water rights, keeping track of water levels in basins, and promoting the use and development of water resources. The ANA should also be responsible for granting concessions and licenses for large projects, including drinking water systems, large-scale irrigation and hydropower. The Law No. 620 provides functions to the ANA for the mediation of conflicts between upstream and downstream users, between small and large farmers, and between competing uses; however, for various reason, the ANA is not correctly functioning, and other state agencies share most of the responsibilities of the water sector;
- The **Nicaraguan Institute for Water and Sanitation** (INAA, <http://www.inaa.gob.ni/>) is a regulatory agency (1997) responsible for regulating tariffs, promoting efficient and adequate service quality and preventing formation of monopolies;
- The **Nicaraguan Water and Sewerage Enterprise** (ENACAL, <http://www.enacal.com.ni/>) is responsible for managing water supply and sanitation services in urban areas, monitoring and controlling water supply in rural areas, and establishing water well protection (1998);
- The **Social Emergency Investment Fund** (FISE, <http://www.fise.gob.ni/>) oversees rural water projects.
- The **National Commission on Water and Sanitation** (CONAPAS) is the governing entity responsible for strategic planning regarding water;
- **Municipal authorities** are responsible for granting authorizations to use water for irrigation of three hectares or less and other minor uses.
- **Local Water and Sanitation Committees** (CAPS) are responsible for management of drinking water and sanitation services and maintenance of infrastructure. CAPs do not appear to exercise any authority over or responsibility for water for irrigation, which is largely governed by farmers

unions, local governments, and basin authorities. (USAID country profile) They are composed of community people in many rural areas.

Several other institutions have water-related responsibilities, including **INETER**, which is responsible for flood control and collection of water data; **MARENA**, which is charged with protecting ground water and monitoring water quality; and **MIFIC**, which oversees the allocation of water resources and issuance of permits.

D. Honduras

1. Legal framework

Water resources in Honduras have been regulated by the health sector and the environmental sector, including the supply of drinking water, sanitary sewage systems and garbage disposal. Legislation in the water sector is quite broad and dispersed through various laws. A reformation and modernization process began in 1990, but it has been slow and incomplete. Among other issues, these reforms include promoting a new legal framework for the sector that will allow institutional changes and a better definition of sector policy.

- The **General Water Law** (2009) replaced the National Water Use Law (1927) that granted the state control over water, giving the State gives the state *“dominion over waters that spring from and flow within the same estate; rainwater runoff through private property, and subterranean waters discovered on an estate by its owner”* (Article 3), and empowering it to regulate water use. The law also regulated procedures on water concessions or contracts, but lacked integrated management of water resources and allowed for unrestricted exploitation of ground water resources. Chapter III sets forth regulations for using state waters to service households, agriculture and manufacturing plants. *“Every citizen may freely use the territorial seas, rivers, lakes, lagoons, inlets, coves, bays, and creeks for navigation, fishing, loading and unloading, anchorage and other similar acts in accordance with the law’s stipulations”* (Article 8). Under the Law, the right to water is a human right guaranteed by the State. Rights to both surface water and groundwater vest with the state. The law states that water is a social resource and calls for equal access to water resources. The law states that human water consumption is privileged over other uses. Waters beyond their natural course that flow through uncovered canals, ditches or aqueducts *“may be used to manually extract water for domestic and manufacturing uses and for irrigating isolated plants. This right is limited when the source of water is on private land or the extraction jeopardizes the water concessionaire”* (Article 10). The law states that national waters may be used for navigation and flotation in accordance with police laws and regulations (Article 14). In order to use national water, public and private companies must sign a contract with the government. *“This contract may be extended and its duration will be determined in each individual case depending on the circumstances”* (Article 19).
- The **Legal Framework for Drinking Water and the Treatment Sector** (2003) was approved by the National Congress of Honduras amidst strong opposition from some political sectors, non-government organizations, and citizens. The main concern of these groups is the authority for

local government to manage water services and that they may grant concessions to private companies after a plebiscite or referendum to determine the opinion of the community. Article 2 of the law establishes the following objectives: promote increased coverage of drinking water and treatment services; ensure water quality and drinking characteristics, thus guaranteeing healthy consumption by the people; promote citizen participation through administrative water boards and other community organizational methods in providing services, carrying out projects, and extending potable water and treatment systems.

2. Water administration and institutions

The General Water Law established a National Water Authority to replace the General Directorate of Water Resources (DGRH), which is under the Ministry of Natural Resources and Environment (SERNA). The National Water Authority is an advisory, deliberative and advisory body. Create Water Authority, which is responsible for implementing the water policies, for the use, operation, applications and any other forms of water resources exploitation.

The Water Framework Law decentralized water supply management from The National Autonomous Service of Aqueducts and Sewerage Service (SANAA) to municipalities (active until 2008). In addition, the law memorializes the primacy of human water consumption. Under the **Law**, municipalities have preference over all other users for the purpose of providing water for human consumption or discharge of sewage. In addition, municipalities are responsible for water provision subject to national water policy as governed by the National Water and Sanitation Council (CONASA) and regulated by the Potable Water and Sanitation Regulatory Agency (ERSAPS). CONASA is responsible for planning, financing and developing strategy and norms, while ERSAPS is responsible for sector regulation and control.

In rural areas, the Water Management Board (JAA) controls water use. The boards are controlled by regulations and supported with technical and administrative assistance by SANAA, which also operates many of the urban water and sanitation systems.

5. Legal and institutional frameworks for the mineral sector

E. Nicaragua

1. Legal framework

In Nicaragua, the core policy documents providing with the legal framework for mineral access and usage rights are the following:

- The **Constitution of Nicaragua** (1987), the state owns all surface and subsurface minerals in Nicaragua. However, the Constitution recognizes rights of indigenous and ethnic communities to the use of mineral on their communal lands, like it does regarding other natural resources (see previous sections).

- The **Special Law on Mines Exploration and Exploitation** (2001) governs the mineral sector, and in particular the process of inviting bids and granting concessions for mineral exploration and exploitation. The Law provides that in the Autonomous Regions (RAAN in particular), concessionaire payments shall be divided among the relevant municipalities and regional councils, and the National Treasury and the balance to the national Mining Development Fund.
- Pursuant to the country's **National Development Plan** (PNDH), the Ministry of Energy and Mines is fostering the following measures: (1) review of the legal framework for mining for the purpose of proposing reforms to the Law; (2) increase knowledge of mineral wealth in the country by carrying out geological studies and mapping mineral sites; (3) improve the registry, inscription, and legalization of artisanal miners; (4) promote the transformation of artisanal miner collectives into small and medium mining companies; and (5) promote joint investments with mining companies in the electricity generation using renewable resources. (USAID country profile)

The state grants concessions for exploration and mineral exploitation, and holders of these rights have the exclusive right to explore, exploit, process, and commercialize minerals. The bidding and award processes for concessions and criteria considered are governed by regulations. The rights granted may be alienated or encumbered and may be rented and negotiated in any contract (except as part of a homestead), provided the right-holder obtains prior governmental authorization. All contracts are registered with the **Central Registry of Concession** (1945). Foreign investors are guaranteed the same rights and duties as national investors. Concessionaires must pay a semiannual surface royalty and an extraction royalty of 3% of the market value of the extracted mineral.

The Law also supports small-scale and artisanal mining operations through setting aside at least 1% of concessions for small-scale mining, permitting small-scale mining to take place within existing concessions supposedly, with the agreement of the concessionaire, and requiring annulment of concession agreements if development does not begin within one year of the concession award. Small-scale and artisanal miner must be registered.

2. Mineral administration and institutions

The Special Law on Mines Exploration and Exploitation provides a framework for the institutional structure for mining in the country:

- The **Ministry of Energy and Mines** (MEM, <http://www.mem.gob.ni>) is responsible for administrating and implementing the sector's strategic plan on geological, mineral, geothermal, oil, and hydroelectric resources, and directing state enterprises operating in the energy sector. The Mining Law establishes a **National Mining Commission** to serve as an advisory body to the Ministry.
- In concert with the MEM, the **Directorate General of Natural Resources in the MIFIC** is responsible for establishing and monitoring the framework for exploration and use of mining resources and for promoting sector development. The Directorate General is charged with

providing efficient, effective and transparent monitoring of the rights and obligations of mining concessionaires.

- The **Ministry of Environment and Natural Resources** is responsible for the conservation, protection, and sustainable use of natural resources and the environment, including ensuring that mining is conducted in an environmentally sound manner.

F. Honduras

1. Legal framework

Article 12 of the Constitution defines that the State has dominion over underground resources and owns all minerals, petroleum, hydrocarbon and gas deposits within its territory. Consequently, under the Constitution, mining activities are regulated by law:

- The **General Law on Mining** (1998) classifies mining activities into: prospecting, exploration, exploitation, processing and commercialization. The Law includes environmental regulations, an income tax and increased municipal taxes. The law restricts the operation of open-pit mines and gives greater importance to environmental concerns²⁸.

Honduras may grant divisible concessions to individuals or entities that can range from 100 to 1000 hectares, or more in the continental shelf. Mining concessions may be alienated, transferred or encumbered and must be registered. Holders of mining concessions must pay an annual fee per hectare and minimum annual production is required. In case of noncompliance, the annual fee may be increased. Concessions may be terminated by cancellation, nullity and waiver.

2. Mineral administration and institutions

The **Executive Director of Mining Development** (DEFOMIN) is responsible for managing the mineral industry. DEFOMIN is charged with the promotion of mining in Honduras, as well as with monitoring the impact of the sector. Concessions must be registered by the holder with the Public Registry of Mining Rights.

6. Conclusion

There is a considerable body of laws and regulations in Nicaragua and Honduras that relates to the access, promotion, development and use of natural resources. Constitutional provisions, environmental laws, land use laws, and sectorial (agriculture, forestry, water and mining in particular) laws all specifically or generally address different aspects of natural resource management. All these policy

²⁸ The Supreme Court of Justice declared the Mining Law partially unconstitutional in 2006, invalidating thirteen articles, including the provision that allows mining companies free access to water. Following this action, reforms to the law prohibited open-pit mining and the use of chemicals such as cyanide, mercury and arsenic.

documents should apply in the N-H Sentinel Landscape. Also, all organizations mentioned as administrations over natural resources should intervene in the Landscape. However, what are the laws and formal rules that are effectively implemented (and sanctioned)? How do state agencies operate in the field?

As defined by Ostrom (1990), working rules "*are common knowledge and are monitored and enforced. Common knowledge implies that every participant knows the rules, and knows that others know the rules, and knows that they also know that the participant knows the rules*". Working rules may have different sources among which (but not only) written policies and laws promulgated by the government. But, one should note that it is not because a rule is formal, that it is enforced and respected. In addition, the outcome of rules may or may not be what was intended when the rule was elaborated and put into effect. As these rules do not interact in a void, they interact with other formal and informal rules, and depend on their alignment with local needs and wants as well as law enforcement. Sometimes formal rules are irrelevant and are simply ignored in a particular situation; or policies may be adjusted in light of local context. The institutional analysis and mapping should consequently analyze the governance of natural resources not only based on written legal documents as briefly presented in this literature review, but also from the perspective of the people (state agents and officials of the Government) that implement the working rules (using a Governance questionnaire –see institutional mapping protocol) and of the people that are submitted to these regulations and might create other informal rules, also working, at the very local level (using a set of forms adapted from the IFRI²⁹ protocol – see institutional mapping protocol).

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²⁹ IFRI, 2013. International Forestry Resources and Institutions (IFRI) network: research methods. [online] Available at: www.ifriresearch.net

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